

REMARKS

This request for continued examination is intended as a full and complete response to the Advisory Action mailed on July 11, 2007 and the final Office Action mailed April 20, 2007. Claims 11-13 are pending and rejected; claims 1-10 are withdrawn. The Applicants herein amend claim 11 and claim 13. The Applicants note that claim 13 was simply amended to correct grammatical errors and the amendments were unrelated to patentability.

In view of the above amendments and the following discussion, Applicants submit that none of the claims now pending in the application are obvious under the provisions of 35 U.S.C. §103. Thus, Applicants believe that all of these claims are now in allowable form.

It is to be understood that Applicants do not acquiesce to the Examiner's characterizations of the art of record or to Applicants' subject matter recited in the pending claims. Further, Applicants are not acquiescing to the Examiner's statements as to the applicability of the art of record to the pending claims by filing the instant response.

Applicants traverse all of the rejections in the final Office Action and respectfully request reconsideration and passage of the claims to allowance for the following reasons.

REJECTION OF CLAIMS 11-13 UNDER 35 U.S.C. §103

Claim 11

The Examiner has rejected claim 11 under 35 U.S.C. §103 as being unpatentable over Hendricks et al. (5,600,573, hereinafter "Hendricks") in view of Kenner et al. (5,956,716, hereinafter "Kenner"), Campanella (5,864,546, hereinafter "Campanella") and Farry et al. (5,608,447, hereinafter "Farry").

The test under 35 U.S.C. §103 is not whether an improvement or a use set forth in a patent would have been obvious or non-obvious; rather the test is whether the claimed invention, considered as a whole, would have been obvious. Jones v. Hardy, 110 USPQ 1021, 1024 (Fed. Cir. 1984) (emphasis added). Thus, it is impermissible to focus either on the "gist" or "core" of the invention, Bausch & Lomb, Inc. v. Barnes-

Hind/Hydrocurve, Inc., 230 USPQ 416, 420 (Fed. Cir. 1986) (emphasis added). Moreover, the invention as a whole is not restricted to the specific subject matter claimed, but also embraces its properties and the problem it solves. In re Wright, 6 USPQ 2d 1959, 1961 (Fed. Cir. 1988) (emphasis added). The combination of Hendricks, Kenner, Campanella and Farry fails to teach or suggest Applicant's invention as a whole.

Claim 11 recites:

11. A method for acquiring and delivering content, comprising:
receiving a content download request from a user terminal;
determining if the request is a local download request or a remote download request;
if the request is a remote download request, determining if the content is to be delivered directly or indirectly, wherein directly delivering content comprises providing the content to the user terminal without traversing any modules between a remote content server and the user terminal, thereby bypassing an aggregator; and
if the content is to be delivered directly:
establishing a communications link from the remote content server to the user terminal, thereby bypassing an aggregator,
forwarding the requested content toward the user terminal,
validating the delivery of the content to the user terminal, and
logging the validated delivery in one of a local server database and a remote server database.

Hendricks fails to teach or to suggest a method for acquiring and delivering content comprising determining if the content is to be delivered directly or indirectly, wherein directly delivering content comprises providing the content to the user terminal without traversing any modules between a remote content server and the user terminal, thereby bypassing an aggregator and if the content is to be delivered directly establishing a communications link from a remote content server to the user terminal, thereby bypassing an aggregator, as positively recited by Applicants' independent claim 11. The Examiner concedes this in the Office Action. (See Office Action, p. 3, ll. 4-9.) However, the Examiner then alleges that Kenner, Campanella and Farry bridge the substantial gap left by Hendricks.

As discussed in Applicants' prior Office Action response(s), Kenner and Campanella also fail to teach or suggest a method for acquiring and delivering content

comprising determining if the content is to be delivered directly or indirectly, wherein directly delivering content comprises providing the content to the user terminal without traversing any modules between a remote content server and the user terminal, thereby bypassing an aggregator and if the content is to be delivered directly establishing a communications link from a remote content server to the user terminal, thereby bypassing an aggregator.

In particular, Kenner discloses a system and method for delivery of video data over a computer network. Kenner teaches that the content from the user terminal always accesses video clips via the local SRU. (See Kenner, col. 7, ll. 25-27.) Even if video clips are downloaded from the extended SRU or the remote SRU, the video clips are stored in the local SRU for retrieval by the user terminal. (See Kenner, col. 8, ll. 52-54; col. 11, ll. 45-51.) Therefore, Kenner fails to teach or suggest determining if the content is to be delivered directly or indirectly, wherein directly delivering content comprises providing the content to the user terminal without traversing any modules between a remote content server and the user terminal, thereby bypassing an aggregator, as positively claimed by the Applicants' invention.

Furthermore, Kenner only discloses determining if the content is to be delivered on an alternate route and not directly or indirectly. (See Kenner, col. 12, ll. 42-55.) Kenner teaches that if a particular SRU is busy supporting other users via DSI 30, PIM may create a remote DSI 42. (See *Id.*) In other words, the download process takes an alternate path. In both cases, the download process goes through an identical number of modules (i.e. a SRU and DSI). (See *Id.*) Notably, nothing is bypassed by the teachings of Kenner.

In contrast, Applicants' invention teaches determining if the content is to be delivered directly or indirectly, wherein directly delivering content comprises providing the content to the user terminal without traversing any modules between a remote content server and the user terminal, thereby bypassing an aggregator and if the content is to be delivered directly establishing a communications link from a remote content server to the user terminal, thereby bypassing an aggregator. In other words, Applicants' invention defines "directly delivering content" as bypassing a module, e.g. an aggregator and providing the content to the user terminal without traversing any other

modules between a remote content server and the user terminal. Consequently, fewer modules are traversed and content may be delivered more quickly and efficiently.

Campanella discloses a system for formatting broadcast data for satellite transmission and radio reception. Campanella also fails to teach or suggest determining if the content is to be delivered directly or indirectly, wherein directly delivering content comprises providing the content to the user terminal without traversing any modules between a remote content server and the user terminal, thereby bypassing an aggregator and if the content is to be delivered directly establishing a communications link from a remote content server to the user terminal, thereby bypassing an aggregator.

Farry fails to bridge the substantial gap between Hendricks, Kenner and Campanella and Applicants' invention as taught in claim 11. The Examiner asserts that Farry teaches the limitation of wherein directly delivering content comprises providing the content to the user terminal without traversing any modules between a remote content server and the user terminal, thereby bypassing an aggregator because Farry discloses use of a permanent virtual circuit. (See Final Office Action, p. 4, l. 18 – p. 5, l. 7.) The Applicants respectfully disagree.

First, it appears the Examiner may be using impermissible hindsight to use the teachings of Farry to modify Hendricks, Kenner and Campanella in a way that would yield the Applicants' invention because Farry does not teach or suggest that the virtual permanent circuits may be used to bypass anything and Kenner does not teach or suggest that a remote SRU may directly communicate with the user terminal. Quite the contrary, Kenner specifically teaches that the PIM 22 is the primary search engine and database management module of the invention. (See Kenner, col. 10, ll. 11-12.) Thus, Farry and Kenner cannot be meaningfully combined to provide a direct path from the remote SRU to the user terminal taught by Kenner.

Furthermore, even if Farry was somehow permissibly combined with Hendricks, Kenner and Campanella, the Applicants respectfully submit that the permanent virtual circuits taught by Farry are not for the purpose of bypassing an aggregator. Notably, Farry does not teach or suggest that any component is bypassed by using the virtual permanent circuit. The virtual permanent circuits used for Farry are simply for

establishing a communication session or connection through the network between an information service provider and a particular subscriber end device. (See Farry, col. 7, ll. 16-18.)

Notably, the Applicants invention teaches two communication paths to a user terminal i.e. a direct path and an indirect path. Thus, the direct path may be used to bypass various components, such as bypassing an aggregator. Nowhere does Farry teach or suggest that each subscriber end device has two paths to it via the virtual permanent circuits. Thus, it does not appear logical to interpret Farry as using the virtual permanent circuits to bypass anything, let alone specifically bypassing an aggregator.

Therefore, because not all the limitations of claim 11 are taught or suggested, for at least the above reasons, Applicants submit that independent claim 11 is not obvious and fully satisfies the requirements of 35 U.S.C. §103 and is patentable thereunder. Therefore, Applicants respectfully request that the rejection be withdrawn.

Claims 12-13

The Examiner has rejected claims 12-13 under 35 U.S.C. §103(a) as being unpatentable over Hendricks, Kenner, Campanella and Farry as applied to claim 11 above, and further in view of Wilkins (5,446,919, hereinafter "Wilkins").

Each of the grounds of rejection applies only to dependent claims, and each is predicated on the validity of the rejection under 35 U.S.C. §103 for independent claim 11. Since the rejection of the independent claim 11 under 35 U.S.C. §103 has been overcome, as described hereinabove, and there is no argument set forth by the Office Action that any other additional references supply that which is missing from Hendricks, Kenner, Campanella and Farry to render the independent claim 11 unpatentable, these grounds of rejection cannot be maintained. Accordingly, these dependent claims also are non-obvious and fully satisfy the requirements of 35 U.S.C. §103 and are patentable thereunder.

Therefore, Applicants respectfully request that the rejection be withdrawn.


CONCLUSION

Thus, Applicants respectfully submit the pending claims are in condition for allowance. Accordingly, both reconsideration of this application and its swift passage to issue are earnestly solicited.

If, however, the Examiner believes that there are any unresolved issues requiring adverse final action in any of the claims now pending in the application, it is requested that the Examiner telephone Eamon J. Wall or Jimmy Kim at (732) 530-9404 so that appropriate arrangements can be made for resolving such issues as expeditiously as possible.

Respectfully submitted,

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